

30(b)(6) Deposition
EXHIBIT 2

MONTANA BOARD OF ENVIRONMENTAL REVIEW

IN THE MATTER OF:)
APPEAL AMENDMENT AM4)
WESTERN ENERGY)
COMPANY, ROSEBUD STRIP)
MINE AREA B)
PERMIT NO. C1984003B)

DEPOSITION OF ANNE HEDGES

On the 11th day of May, 2016, beginning at
9:00 a.m., the deposition of ANNE HEDGES, appearing
at the instance of Intervenors, was heard at the
Montana Department of Environmental Quality,
1520 East Sixth Avenue, Helena, Montana, before
Lisa R. Lesofski, Registered Professional Reporter,
Notary Public.

<p style="text-align: right;">Page 22</p> <p>1 MR. MARTIN: Okay.</p> <p>2 Q. (By Mr. Martin) While we were off the</p> <p>3 record, Ms. Hedges, you noted that this does not</p> <p>4 include every feature of the Rosebud Mine, notably</p> <p>5 you said it doesn't identify the Big Sky Mine, it</p> <p>6 doesn't have the cumulative impact area and it</p> <p>7 doesn't include, I will also say for the record,</p> <p>8 every single feature that one might identify with a</p> <p>9 map; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. Let's go ahead and mark the document.</p> <p>12 (Deposition Exhibit 5 marked for</p> <p>13 identification.)</p> <p>14 Q. (By Mr. Martin) Again, referring to</p> <p>15 Exhibit 5, the map that we've been talking about.</p> <p>16 What it does identify is the different areas,</p> <p>17 doesn't it?</p> <p>18 A. It identifies the different areas of this,</p> <p>19 of Western Energy's Rosebud Mine.</p> <p>20 Q. And we have Area B; is that correct? Do</p> <p>21 you see that on the map?</p> <p>22 A. I do.</p> <p>23 Q. And you see Area F on the map?</p> <p>24 A. Yes.</p> <p>25 Q. And Area C is in between. Do you see</p>	<p style="text-align: right;">Page 24</p> <p>1 A. More than four miles? No. I don't think</p> <p>2 that's apparent.</p> <p>3 Q. Would you say about four miles?</p> <p>4 A. It could be, uh-huh.</p> <p>5 Q. Okay. And Area C is between Area B and</p> <p>6 Area F; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. In response to my question about the</p> <p>9 interface between Area F and Area B, you recounted</p> <p>10 the regulation that governs material damage under</p> <p>11 the Montana Surface Mining Act, didn't you?</p> <p>12 A. Correct.</p> <p>13 Q. And how would that apply vis-a-vis Areas B</p> <p>14 and F?</p> <p>15 A. Because Area B is -- Area B and Area F are</p> <p>16 within the cumulative hydrologic impact, or</p> <p>17 cumulative impact area that has been determined for</p> <p>18 the mine and they both affect some of the same</p> <p>19 watersheds, which are outside the permit boundary.</p> <p>20 Q. And you're talking now about surface</p> <p>21 waters; is that right?</p> <p>22 A. Surface and groundwaters.</p> <p>23 Q. And you're looking at the CHIA again. Can</p> <p>24 you say for the record what document you're looking</p> <p>25 at, that is to say what table or map that you're</p>
<p style="text-align: right;">Page 23</p> <p>1 those features identified on the map?</p> <p>2 A. Yes.</p> <p>3 Q. And do you have any reason to believe that</p> <p>4 this map is inaccurate with respect to the</p> <p>5 identification of those areas?</p> <p>6 A. I have no way to tell one way or the other</p> <p>7 without spending more time with it.</p> <p>8 Q. So at least as you sit here today, you</p> <p>9 can't identify a deficiency in terms of where those</p> <p>10 areas are located; is that right?</p> <p>11 A. Right.</p> <p>12 MR. SULLIVAN: And I would object on the</p> <p>13 basis of asked and answered.</p> <p>14 Q. (By Mr. Martin) And, again, just for</p> <p>15 purposes of the record, if you don't mind, based on</p> <p>16 this map and looking at its legend, can you say for</p> <p>17 the record how far away Area F is from Area B?</p> <p>18 A. A mile or two. I can't tell. I mean, I</p> <p>19 see a legend but, you know, that's...</p> <p>20 Q. Is it fair to say it's over four miles</p> <p>21 away?</p> <p>22 A. It's -- yes. No, it's -- I don't know. I</p> <p>23 can't tell you for sure. Possibly.</p> <p>24 Q. Based on this map, isn't it apparent that</p> <p>25 it's more than four miles away from Area B?</p>	<p style="text-align: right;">Page 25</p> <p>1 looking at from the CHIA?</p> <p>2 A. It's page 13-7 and it is Figure 5-1.</p> <p>3 Q. Is there a map in the CHIA that you would</p> <p>4 take issue with?</p> <p>5 A. No. I'd have no reason to take issue with</p> <p>6 them.</p> <p>7 Q. Was this concern about the interaction</p> <p>8 between Area F and Area B addressed in MEIC's</p> <p>9 comments?</p> <p>10 A. Yes, it was.</p> <p>11 Q. Can you show me where it was?</p> <p>12 A. It was a reference to our scoping</p> <p>13 comments.</p> <p>14 Q. Can you describe that for the record?</p> <p>15 A. I'd have to see the scoping comments to</p> <p>16 get them perfectly accurate. But it was a reference</p> <p>17 to the fact that they needed to consider other areas</p> <p>18 of the mine that were -- "where anticipated mining</p> <p>19 could occur, which includes at a minimum the entire</p> <p>20 projected lives through bond release of all</p> <p>21 operations with pending applications and all</p> <p>22 operations required to meet diligent development</p> <p>23 requirements for leased federal coal for which there</p> <p>24 is actual mine development information available."</p> <p>25 Q. Ms. Hedges, what did you just read from?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. I just read from Montana Rules 2 17.24.301(32.) 3 Q. And I appreciate the text of the 4 regulation. Can you show me anywhere in your 5 comments where that issue was raised on August 3rd, 6 2015? 7 A. It was a -- I believe it's in Footnote 1, 8 a letter from MEIC and Sierra Club to Nate Arave, 9 BLM, on October 10th, 2014. 10 Q. Do you have that document with you right 11 now? 12 A. I do not. 13 Q. And as you sit here today, how do you know 14 that that issue was raised in the letter from 15 MEIC/Sierra Club of October 10, 2014? 16 A. Well, because I reviewed it at the time. 17 Q. When did you review it? 18 A. A long time ago. And then I read about it 19 again in preparation for this deposition. 20 Q. And, Ms. Hedges, that's the only basis for 21 your testimony that this issue was raised in MEIC's 22 comments? 23 A. I'd have to look back in our comments and 24 check. 25 Q. Well, by all means. Go ahead and review</p>	<p style="text-align: right;">Page 28</p> <p>1 this in our responses to your comments in one of 2 these documents that you have provided me. Our 3 response to interrogatories, it was an issue we 4 raised. 5 Q. But focusing directly on Exhibit 2, if I 6 understood your testimony, the only way this issue 7 was raised was by the footnote, i.e, Footnote 1; is 8 that correct? 9 A. The only way it was raised it was raised. 10 It was raised whether you think that one time was 11 sufficient or we needed to repeat ourselves multiple 12 times. The bottom line is we raised this in our 13 comments. 14 Q. And -- 15 A. And it is a requirement in law. 16 Q. Ms. Hedges, the only place where this was 17 raised in Exhibit 2 is the footnote; is that 18 correct? 19 MR. SULLIVAN: I'm going to object on the 20 basis of the form of the question. It is 21 argumentative and it has also been asked and 22 answered and, finally, the document speaks for 23 itself. 24 MR. MARTIN: Read back the question. 25 (Previous question read.)</p>
<p style="text-align: right;">Page 27</p> <p>1 those comments. 2 A. Okay. 3 Q. Should we go ahead and take a break here 4 so you've got a chance to review this more 5 carefully? 6 MR. SULLIVAN: Sure. 7 (Break taken.) 8 Q. (By Mr. Martin) Ms. Hedges, we broke for 9 a few minutes and I think you had an opportunity to 10 review Exhibit 2. 11 A. Uh-huh. 12 Q. And are there other places in Exhibit 2 13 where this issue was raised, specifically the issue 14 regarding the interaction between Area F and Area B? 15 A. Exhibit 2 raised this issue in the 16 footnote that we attached as an Exhibit A to our 17 comments. But ultimately the company and DEQ, 18 primarily the company, have the burden and the 19 administrative record is supposed to demonstrate 20 that there is compliance with the standards in the 21 law, and that was the expectation that you would 22 comply with the standards in the law. 23 The definition of anticipated uses is a 24 regulation by which you were supposed to comply. So 25 we certainly expected compliance and we have raised</p>	<p style="text-align: right;">Page 29</p> <p>1 A. And attached as Exhibit A in our comments. 2 Q. (By Mr. Martin) Okay. That's a fair 3 point. So the footnote and the attachment that 4 included the document referenced in the footnote; is 5 that right? 6 A. From my knowledge and my review of this 7 letter at this time, that appears to be the case. 8 Q. So prior to the issuance of the CHIA, to 9 the best of your knowledge was that issue raised to 10 DEQ other than what you've just described? 11 A. That is the avenue by which we raise 12 issues to DEQ is to provide comments, which we did, 13 and it was included in our comments. 14 Q. All right. For the record, I'm going to 15 move to strike that answer as not responsive. 16 MR. MARTIN: Would you read back the 17 question? 18 (Previous question read.) 19 MR. SULLIVAN: And I'll object to that 20 question as asked and answered. 21 Q. (By Mr. Martin) You may answer the 22 question. 23 A. It was raised in our comments, as you 24 stated. 25 Q. And no other place, to the best of your</p>

<p style="text-align: right;">Page 30</p> <p>1 knowledge?</p> <p>2 A. To the best of my knowledge.</p> <p>3 Q. To the best of your knowledge, yes?</p> <p>4 A. Yes.</p> <p>5 Q. Thank you.</p> <p>6 For purposes of the record, I'd like to</p> <p>7 clarify. I misspoke when I described our last</p> <p>8 exhibit and I indicated that all of the areas were</p> <p>9 areas of permitted mining. Am I right that Area F</p> <p>10 is a proposed area of mining as opposed to one</p> <p>11 that's been permitted?</p> <p>12 A. It is an area where mining is anticipated.</p> <p>13 Q. But no permit has been issued?</p> <p>14 A. The permit has been applied for and is</p> <p>15 pending. DEQ is reviewing that now.</p> <p>16 Q. And it's not been issued?</p> <p>17 A. No.</p> <p>18 MR. MARTIN: Off the record.</p> <p>19 (Discussion off the record.)</p> <p>20 (Deposition Exhibit 6 marked for</p> <p>21 identification.)</p> <p>22 Q. (By Mr. Martin) Ms. Hedges, we've laid</p> <p>23 out a map that's been marked for identification as</p> <p>24 Exhibit 6. You'll note in the bottom left-hand</p> <p>25 corner it has the designation Figure 8-5,</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I have some familiarity.</p> <p>2 Q. And do they give you an indication as to</p> <p>3 the direction of groundwater flow?</p> <p>4 A. I believe that that's the purpose.</p> <p>5 Q. And you'll see designations of Areas A, B,</p> <p>6 C on this map. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And you also see, do you not, a</p> <p>9 designation for Big Sky Mine?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any reason to believe that</p> <p>12 these potentiometric contours are not drawn</p> <p>13 accurately?</p> <p>14 MR. SULLIVAN: And before you answer, I'm</p> <p>15 going to object both on the basis of foundation</p> <p>16 in terms of the witness as not being advanced</p> <p>17 as an expert and, second, I'm not sure as to</p> <p>18 where this fits into the 26 issues that you've</p> <p>19 specified an organizational representative to</p> <p>20 appear this morning.</p> <p>21 Q. (By Mr. Martin) Okay, you can answer the</p> <p>22 question.</p> <p>23 A. Can you repeat it?</p> <p>24 MR. MARTIN: Go ahead.</p> <p>25 (Previous question read.)</p>
<p style="text-align: right;">Page 31</p> <p>1 Potentiometric Surface of the Rosebud Coal and</p> <p>2 Spoil. And I'll certify for the record that that is</p> <p>3 a document that was taken from the CHIA and I</p> <p>4 believe it's at page 13-21. And let's talk about</p> <p>5 where it came from.</p> <p>6 You have the CHIA in front of you, do you</p> <p>7 not, Ms. Hedges?</p> <p>8 A. I do.</p> <p>9 Q. And is this document the same map that</p> <p>10 appears within the CHIA at page 13-21?</p> <p>11 A. Yes, it appears to be.</p> <p>12 Q. I'll ask you, if you don't mind, if you</p> <p>13 would look at this map and review it. You'll see</p> <p>14 that there are certain lines that are drawn on the</p> <p>15 map. Do you know what those are?</p> <p>16 A. This is the potentiometric surface of</p> <p>17 Rosebud Coal and Spoil plotted for monitoring well</p> <p>18 water levels at the Rosebud and Big Sky Mines in</p> <p>19 2012.</p> <p>20 Q. And you know, don't you, what</p> <p>21 potentiometric contours are?</p> <p>22 A. More or less. I am not a scientist. I am</p> <p>23 not an expert.</p> <p>24 Q. But you're familiar with those sorts of</p> <p>25 contours, aren't you?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I am not an expert so I have no way to</p> <p>2 know one way or the other.</p> <p>3 Q. (By Mr. Martin) So is it fair to say that</p> <p>4 on that issue MEIC/Sierra Club has no position?</p> <p>5 A. No, it is not fair to say.</p> <p>6 MR. SULLIVAN: And I would say that that</p> <p>7 also calls for a legal conclusion, object on</p> <p>8 that basis.</p> <p>9 Q. (By Mr. Martin) So the accuracy of</p> <p>10 potentiometric contours is not something that you're</p> <p>11 able to testify about at this point in time; is that</p> <p>12 right?</p> <p>13 A. I am not. I am not a hydrologist.</p> <p>14 Q. And the organizations are not prepared at</p> <p>15 this point in time to contest the accuracy of those</p> <p>16 potentiometric contours; is that correct?</p> <p>17 MR. SULLIVAN: And I would object as being</p> <p>18 beyond the basis of the 30(b)(6) deposition.</p> <p>19 Q. (By Mr. Martin) You can answer the</p> <p>20 question.</p> <p>21 A. Can you repeat it?</p> <p>22 MR. MARTIN: Go ahead.</p> <p>23 (Previous question read.)</p> <p>24 A. To the best of my knowledge, no.</p> <p>25 Q. (By Mr. Martin) Would you agree with me</p>

<p style="text-align: right;">Page 34</p> <p>1 that potentiometric contours tend to provide 2 evidence of the direction of groundwater flow? 3 MR. SULLIVAN: And, John, do you mind if I 4 have a standing objection on the same grounds 5 if you're going to pursue this potentiometric 6 map? I've stated objections as being on 7 foundation -- 8 MR. MARTIN: That's fine. 9 MR. SULLIVAN: -- and also as beyond the 10 scope of the 30(b)(6) -- 11 MR. MARTIN: That's fine. 12 MR. SULLIVAN: -- deposition notice. 13 A. Can you repeat the question? 14 (Previous question read.) 15 A. I believe that's what they indicate. 16 Q. (By Mr. Martin) And I'll invite your 17 attention to Area B. Do you see that designation? 18 A. I do. 19 Q. And can you discern from the 20 potentiometric contours the direction of groundwater 21 flow? 22 A. No. I am just not an expert in this arena 23 and if I tried to guess, I would probably be in 24 error and I don't want to be in error. I would 25 probably want to seek expert advice.</p>	<p style="text-align: right;">Page 36</p> <p>1 scientific evidence that would suggest to you that 2 groundwater from Area B would flow in the direction 3 of Area F? 4 A. I believe that is your job to demonstrate. 5 Q. And I appreciate the legal burden. But do 6 you know of any evidence that demonstrates to the 7 contrary? 8 A. I'd have to look at the record. It's 9 possible that it is in the CHIA. 10 Q. But you don't know? 11 MR. SULLIVAN: Objection, asked and 12 answered. 13 MR. MARTIN: She didn't answer the 14 question. 15 Q. (By Mr. Martin) You don't know, do you? 16 A. The CHIA map indicates that there is a 17 hydrologic connection at some point, whether it's 18 ground or surface water, between these areas and 19 that was not analyzed in the CHIA. 20 Q. Ms. Hedges, can you identify any map, any 21 place in the CHIA that even suggests that 22 connection? 23 MR. SULLIVAN: Objection, asked and 24 answered. 25 A. Any map? I don't know of any, but I</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. And let's talk about that for a 2 minute. Are you aware of any scientific evidence 3 that groundwater would flow from Area B to the west 4 toward Area F? 5 A. I believe there are certain areas in which 6 the drainages do flow into the same drainage. 7 Q. And, again, I'll invite your attention to 8 Exhibit 6. Can you point to one of those drainages? 9 A. The Area B, if you look at all of Area B 10 and you go beyond this -- I would like to stop and 11 say that was the purpose of our complaint is we do 12 not believe that you have adequately shown what 13 Area F is going to do in relation to the impacts 14 from Area B. They are both potentially going to 15 impact the same watersheds and it is your burden to 16 show what that impact will be. And we do not 17 believe that that has been done in the record. 18 Q. And you would agree with me that this 19 document is from the record; is that right? 20 A. That is correct. 21 Q. And with potentiometric contours, it does 22 give you an indication of the direction of 23 groundwater, doesn't it? 24 A. That's -- Yes, I believe so. 25 Q. Is there any evidence, any credible</p>	<p style="text-align: right;">Page 37</p> <p>1 haven't looked closely at the maps because I am not 2 a hydrologist. 3 Q. (By Mr. Martin) Ms. Hedges, if I 4 understood your testimony a moment ago, you 5 referenced what you described a, "a CHIA map," that 6 demonstrated a hydrologic connection between Area F 7 and Area B. Where is that map? 8 A. That map -- well, the map -- Let me find 9 the map. Where is that map? These are my stickies. 10 The map is map 5.1, but it does not include Area F. 11 But Area F is within, as stated by DEQ in its 12 response to our interrogatories, their response 13 is -- if you'd like me to find them, I can -- there 14 is parts of Area F that are within the Area B 15 hydrologic impact areas. 16 Q. Let me see if I understand your testimony. 17 I think your answer to my question is that Area B 18 and a part of Area F is within the cumulative impact 19 area; is that right? 20 A. I believe that's stated correctly. 21 Q. Okay. And so the basis for your testimony 22 that there is a hydrologic connection between Area F 23 and Area B is simply that a part of Area F is within 24 the cumulative impact area; is that correct? 25 MR. SULLIVAN: And I think that it</p>

<p style="text-align: right;">Page 38</p> <p>1 misstates the deponent's testimony. 2 MR. MARTIN: And that's why I'm asking the 3 question. 4 Q. (By Mr. Martin) Answer the question. 5 A. DEQ in its response to our -- in 6 Respondent's Response to Petitioners' First Set of 7 Requests for Admissions and Requests for Production, 8 there are a number of places in which DEQ identifies 9 that portions of Area F are within the Area B area. 10 Q. And do you have any evidence anywhere in 11 the CHIA or elsewhere that there is a hydrologic 12 connection between Area B and Area F? 13 A. That is the purpose of a CHIA is to make 14 that determination and that is not in the record. 15 MR. MARTIN: Read back the question. 16 (Previous question read.) 17 MR. SULLIVAN: And I object on the basis 18 of asked and answered and argumentative. 19 A. There is a failure to meet your burden 20 showing that there is no connection between the two 21 of them. 22 Q. (By Mr. Martin) But am I right in saying 23 that at this point in time you're not aware of any 24 scientific information that there is a hydrologic 25 connection between Area F and Area B?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Oh, yes. Yes, it was. 2 Q. And you don't know at this point in time 3 whether or not Exhibit 6 gives you an indication as 4 to the direction of groundwater flow from Area B and 5 specifically from AM4, do you? 6 A. Could you repeat that question? 7 Q. Why don't I rephrase it. I'm sorry. 8 Do you know the direction of groundwater 9 flow from the area that's designated as Area B 10 and/or AM4? 11 A. I know that the CHIA, the written CHIA 12 describes a lot of the groundwater flow as going 13 towards East Fork Armells Creek, and there is a lot 14 of places in the CHIA that describe groundwater flow 15 in this area. Because I am not a hydrologist, I 16 rely more on words than I do on potentiometric maps. 17 I go to experts for that type of information. 18 Q. And have you been to an expert or seen 19 words that would indicate to you that groundwater 20 was flowing from Area B to Area F? 21 MR. SULLIVAN: And I'm going to object to 22 the form of the question on several bases. 23 First, it's a compound question; second, it's 24 confusing; and, third, we have not disclosed 25 that we will be using any testifying experts in</p>
<p style="text-align: right;">Page 39</p> <p>1 A. We have not seen any presented. 2 Q. I don't want to be argumentative. And I 3 think what your testimony is is that there is not, 4 to the best of your knowledge, any scientific 5 evidence that demonstrates a hydrologic connection 6 between Area B and Area F; is that right? 7 A. On the record? No, I don't believe there 8 is any. 9 Q. Is there any elsewhere off the record? 10 A. Goodness sakes, I don't know. 11 Q. Okay. Have you worked at all with 12 potentiometric contours? 13 A. No. I'm not a water, groundwater expert 14 by any means. 15 Q. So is it fair to say you don't know the 16 direction of the groundwater from the AM4 area 17 within Area B; is that right? 18 A. It's listed in the CHIA, and I'd be happy 19 to find it for you in the CHIA and read it back to 20 you. That information, some of it is provided in 21 the CHIA. 22 Q. And Exhibit 6 is taken from the CHIA as 23 well; is that right? 24 A. Which one was Exhibit 6? 25 Q. It's this one.</p>	<p style="text-align: right;">Page 41</p> <p>1 this proceeding and to the extent the petition 2 organizations have consulted with experts with 3 their attorneys, that's attorney work product 4 and otherwise privileged. 5 Q. (By Mr. Martin) Well, let's clarify the 6 question. Are you aware of any expert opinion that 7 would suggest to you that groundwater flows from 8 Area B to Area F? 9 A. I am not aware. 10 Q. And is there an indication someplace in 11 the text that groundwater would flow from Area B to 12 Area F? 13 A. I believe you are mistaken in how you are 14 representing what you think is our position. Our 15 position is that it is the area that is impacted, so 16 it would be not that groundwater might flow 17 underneath Area F from Area B, it is that the 18 development of both areas has the potential to 19 impact the hydrology in the area. 20 Q. Do they interact with one another? 21 A. They may. 22 Q. And what would make you say that? 23 A. Because they both lie within the 24 cumulative impact area. 25 Q. And that's the only basis for that</p>

<p style="text-align: right;">Page 46</p> <p>1 MR. SULLIVAN: Counsel, where --</p> <p>2 Q. (By Mr. Martin) -- and if the answer is</p> <p>3 you don't know, I understand that.</p> <p>4 A. The answer --</p> <p>5 MR. SULLIVAN: For foundation, on this</p> <p>6 where is Area F? I don't see an Area F on this</p> <p>7 map.</p> <p>8 Q. (By Mr. Martin) Do you know where Area F</p> <p>9 would be on this map?</p> <p>10 A. Approximately but not definitely, which is</p> <p>11 one of the reasons that we would want it included in</p> <p>12 the analysis.</p> <p>13 Q. And it would be on the western side of</p> <p>14 this map; would it not?</p> <p>15 A. Yes.</p> <p>16 Q. And the groundwater, can you tell what the</p> <p>17 direction of the groundwater is?</p> <p>18 A. Only from certain areas. I don't know</p> <p>19 where Area F is. It has not been identified.</p> <p>20 Q. And to the extent that this document and</p> <p>21 this analysis provides for the direction of</p> <p>22 groundwater, wouldn't that be an evaluation as to</p> <p>23 whether or not Area F impacted BLM?</p> <p>24 MR. SULLIVAN: And I'm going to again</p> <p>25 object on the basis of foundation and also</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. SULLIVAN: And I'm going to object on</p> <p>2 the basis of calling for a legal conclusion.</p> <p>3 A. That burden is not on us. That burden is</p> <p>4 on you. We think the law is clear on what your</p> <p>5 legal obligations were.</p> <p>6 Q. (By Mr. Martin) And you didn't ask for</p> <p>7 that level of response in your comments, did you?</p> <p>8 A. We wanted you to include Area F in the</p> <p>9 analysis. In our mind the analysis includes what is</p> <p>10 required by law.</p> <p>11 Q. And you didn't, however, in your comments,</p> <p>12 even mention Area F, did you?</p> <p>13 MR. SULLIVAN: Well, that whole area has</p> <p>14 been asked and answered, so I'm going to object</p> <p>15 on form on that basis.</p> <p>16 A. We did raise it in our comments.</p> <p>17 Q. (By Mr. Martin) And you're talking now</p> <p>18 about the footnote in the attachment; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And that's the only place?</p> <p>21 A. That is the place.</p> <p>22 Q. And you didn't ask for a detailed analysis</p> <p>23 of Area 4 in your comments, did you?</p> <p>24 MR. SULLIVAN: I'm sorry, John. Area</p> <p>25 what?</p>
<p style="text-align: right;">Page 47</p> <p>1 calling for a legal conclusion.</p> <p>2 A. No.</p> <p>3 Q. (By Mr. Martin) And why not?</p> <p>4 A. Because you haven't identified where</p> <p>5 Area F is so I don't even -- I can't tell if the</p> <p>6 potentiometric map actually includes all or just a</p> <p>7 portion of Area F.</p> <p>8 Q. And if you know that Area F is on the</p> <p>9 western side of this map and you know the direction</p> <p>10 of the groundwater, isn't that an evaluation of the</p> <p>11 impact between Area F and Area B?</p> <p>12 A. No.</p> <p>13 Q. And what would you demand beyond that?</p> <p>14 A. I would like to see Area F indicated on</p> <p>15 the map and I'd like to see an analysis of Area F</p> <p>16 and where groundwater would flow and what its impact</p> <p>17 may be on the hydrology in the area both West Fork</p> <p>18 Armells Creek and East Fork Armells Creek and their</p> <p>19 tributaries.</p> <p>20 Q. And that's the level of response that you</p> <p>21 would require?</p> <p>22 A. Off the top of my head, that's what I can</p> <p>23 think of, yes.</p> <p>24 Q. And you didn't require that level of</p> <p>25 response in your comments, did you?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. (By Mr. Martin) I'm sorry. I misspoke.</p> <p>2 Area F in your comments.</p> <p>3 A. We believe that we -- well, yes, we did.</p> <p>4 It was raised as an issue in our comments, which</p> <p>5 indicates it's something that should have been</p> <p>6 considered because it is required under law.</p> <p>7 Q. And let me just be clear on this question.</p> <p>8 And I don't want to be ambiguous in any respect.</p> <p>9 And for purposes of the record, you never asked for</p> <p>10 a detailed analysis of Area F in your comments?</p> <p>11 A. Why would we ask for an analysis of Area F</p> <p>12 if it weren't going to be detailed?</p> <p>13 MR. MARTIN: Read back the question.</p> <p>14 (Previous question read.)</p> <p>15 A. We raised it in our comments and that</p> <p>16 indicates we thought it should be included in the</p> <p>17 analysis. We included it as an attachment to our</p> <p>18 comments, which indicates it was something that we</p> <p>19 thought was important.</p> <p>20 Q. (By Mr. Martin) You never asked -- is it</p> <p>21 correct to say that you never asked for a detailed</p> <p>22 analysis of Area F in your comments?</p> <p>23 MR. SULLIVAN: And I'm going to object as</p> <p>24 asked and answered.</p> <p>25 A. We raised it in our comments.</p>

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1 **Armells Creek to form Armells Creek lower down.**
2 Q. Okay. Well, first let's talk about Lee
3 Coulee. Are you familiar with any indication that
4 groundwater would flow from AM4 into Lee Coulee?
5 **A. We are concerned with the cumulative**
6 **impacts from Area B. Amendment 4 is just one small**
7 **amendment to the Area B permit.**
8 Q. And are you familiar with whether or not
9 groundwater would flow from AM4 to Lee Coulee; do
10 you know?
11 **A. I don't know the answer to that. It's**
12 **Area B that is the subject of our concern. This is**
13 **an amendment to that permit. It is not a permit**
14 **that stands on its own.**
15 Q. So the answer is you don't know as you sit
16 here today about the flow of groundwater from AM4
17 toward Lee Coulee, do you?
18 **A. I do not know.**
19 Q. Okay. Let's go back to the two surface
20 waters that you mentioned in addition to Lee Coulee.
21 One was West Fork Armells Creek. I gather from your
22 testimony that you believe that Area F would have an
23 impact on West Fork Armells Creek; is that right?
24 **A. That's my prediction. I also believe**
25 **there is a potential for it to impact East Fork**

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1 **Armells Creek, but that's -- we will see when they**
2 **come out with their draft environmental impact**
3 **statement what they think.**
4 Q. Okay. Well, let's stop there. As you sit
5 here today, are you aware of any evidence that
6 groundwater from Area F would flow to East Fork
7 Armells Creek?
8 **A. It has not been provided in the record.**
9 Q. And even outside the record, are you aware
10 of any evidence that would suggest that groundwater
11 or surface water from Area F would flow to East Fork
12 Armells Creek?
13 **A. Not being a hydrologist, I don't know the**
14 **answer to that. I don't know if it would or not.**
15 **That's the purpose of developing a record.**
16 Q. So the answer is you just don't know?
17 **A. I just don't know.**
18 Q. Okay. And let's also go back to Area B.
19 Are you aware of any scientific evidence that would
20 suggest that groundwater or for that matter surface
21 water from Area B would make its way to West Fork
22 Armells Creek?
23 **A. I'm not aware of any evidence.**
24 Q. And you mentioned that East Fork Armells
25 Creek and West Fork Armells Creek eventually meet to

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1 the north of the Rosebud Mine; is that right?
2 **A. Yes.**
3 Q. And do you know how far north?
4 **A. No. I'd venture a guess of probably ten**
5 **miles or so, but I could be right or wrong by quite**
6 **a few miles.**
7 Q. And you talked about or I asked for your
8 testimony concerning the surface water CIA; is that
9 right?
10 **A. Yes.**
11 Q. And do you see where the CIA is limited
12 with respect to East Fork Armells Creek and West
13 Fork Armells Creek?
14 **A. I do.**
15 Q. And that's well below the ten-mile
16 distance --
17 **A. That's well below. Can you repeat that?**
18 Q. I'm sorry. Let me rephrase that. That
19 boundary is well south of the point where East Fork
20 Armells Creek meets West Fork Armells Creek; is that
21 correct?
22 **A. Yes, but the water is the same and the**
23 **legal requirements for that water are the same when**
24 **it comes to impairment.**
25 Q. Am I right that you didn't dispute the

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1 boundary of the cumulative impact area; is that
2 right?
3 **A. I did not.**
4 Q. And the place where East Fork meets West
5 Fork of Armells Creek is well outside the cumulative
6 impact area; is that correct?
7 **A. Yes. According to this map, yes.**
8 Q. And that is in the record; is that
9 correct?
10 **A. Yes, that is in the record.**
11 Q. Ms. Hedges, just to refresh your
12 recollection, I'll refer again to Exhibit 5 which,
13 of course, is the map of the Rosebud Mine that
14 designates the different areas of existing or
15 proposed permits. Do you see where Area C is
16 located?
17 **A. Yes.**
18 Q. And can you describe where it's located
19 for the record?
20 **A. Just across East Fork Armells from Area B.**
21 Q. And is it fair to say that it's between
22 Area B and Area F?
23 **A. Yes.**
24 Q. And I think you indicated that you have a
25 copy of the CHIA in front of you; is that right?

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1 definition of anticipated uses, it does not include
2 Area F and on page 7, number 4 --

3 Q. You know, I'm going to interrupt you and I
4 have to ask that you answer the question. Are you
5 unable to even describe or draw on this exhibit a
6 hypothetical groundwater connection between Area F
7 and Area B?

8 **MR. SULLIVAN:** I object to the
9 interruption of the answer. The answer was
10 being responsive and it was describing as best
11 this witness with her qualifications could her
12 response to your question. And I would like to
13 have at least the courtesy of her being able to
14 make her response and you can follow up with
15 whatever questions you care to, but the
16 deponent should be allowed to fully answer a
17 question that's proffered.

18 **MR. MARTIN:** And in fairness, it was not
19 responsive to the question. It was a statement
20 of the general position that your client has
21 made.

22 Now, look, I don't like to interrupt
23 witnesses and I'm not going to make that a
24 practice, but this is unusual. I asked a
25 question. I'm not getting an answer.

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1 **MR. SULLIVAN:** I object to the objection
2 to the answer. You know, you and I, John, can
3 sort this out, but I think the best way to do
4 it is to allow the witness to finish. It then
5 allows you to follow up with your questions --

6 **MR. MARTIN:** All right.

7 **MR. SULLIVAN:** -- and then we can move
8 forward with an appropriate record that we can
9 do with what we feel is appropriate.

10 Q. (By Mr. Martin) And, Ms. Hedges, if you
11 want to finish your answer, by all means, go ahead.

12 **A. Thank you. I would like to.**

13 If you look on DEQ's response to our
14 interrogatories, our requests for response, if you
15 look on page 4, Request for Admission Number 3,
16 Number 4, and Number 6, Interrogatory Number 6, all
17 of those say that, "DEQ admits that the proposed
18 Area F permit areas are within the cumulative
19 hydrologic impact area, but DEQ's CHIA for
20 Amendment 4 did not address any of the potential
21 hydrologic impacts expected from the proposed
22 Area F. A portion of the currently proposed Area F
23 operation is within the cumulative hydrologic impact
24 area identified in DEQ's CHIA."

25 All I can go off of, because I am not a

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1 hydrologist, is what is in the record and DEQ's
2 record admits that it did not analyze this. So I
3 could give you an opinion and it would be
4 meaningless because I am not a hydrologist, I
5 haven't looked at the raw data, and it hasn't been
6 provided in the record.

7 Q. And, Ms. Hedges, then is it fair to say
8 based on what you just described that as you sit
9 here today, you don't know of a way that groundwater
10 would interact between Areas B and F?

11 **A. It is not included in the record, so no.**

12 **MR. MARTIN:** Read back the question.

13 **A. So, no, it has not been included in the
14 record.**

15 Q. (By Mr. Martin) So the answer is you
16 don't know of any potential hydrologic impact
17 between Areas F and B?

18 **A. I don't know whether there is a potential
19 or not a potential because it hasn't been included
20 in the record.**

21 Q. Okay. Let's move on.

22 In various documents Sierra Club/MEIC has
23 indicated a concern for the impact of AM4 on Rosebud
24 Creek and its tributaries; is that right?

25 **A. Yes.**

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1 Q. What is that concern?

2 **A. The concern is that you failed to consider
3 the impacts from Area B, which you are amending the
4 permit on Rosebud Creek. It is that it's not
5 Amendment 4 per se, it is the cumulative impacts
6 from Area B that are impacting Lee Coulee and other
7 tributaries that go into the Rosebud.**

8 Q. And is it fair to say, without going
9 through what we've been through with respect to
10 Area F, you don't, as you sit here today, know the
11 direction of groundwater flow from AM4?

12 **A. I'm sure it's in, you know, there is some
13 evidence of that in the record and I could find it
14 for you if you're interested.**

15 Q. And in terms of the maps that we've showed
16 you with the potentiometric contours, that doesn't
17 tell you even the direction of the groundwater; is
18 that right?

19 **A. It gives some information regarding the
20 direction of the groundwater, but the hydrology in
21 that area is complex, as is the geology. And so the
22 potentiometric map is helpful but it is not a
23 complete analysis.**

24 Q. But you don't know as you sit here today
25 whether or not, for example, groundwater could make

<p style="text-align: right;">Page 98</p> <p>1 more extensive at Lee Coulee in particular, mining 2 impacts are most likely in these drainages but have 3 been predicted to be insignificant below their 4 junctions with the much larger Rosebud Creek 5 drainage, there is evidence in here that is stated, 6 and I would be happy to find it for you if you give 7 me a moment, that there are two monitors on Rosebud 8 creek, one above Lee Coulee and one below Lee Coulee 9 and the impacts show that the water levels are 10 better above where Lee Coulee enters than below 11 where Lee Coulee enters out of Rosebud. 12 Q. Let's talk about those two stations. And, 13 again, directing your attention to Exhibit 9 and 14 just turning to page 9-15, the top of that document. 15 It reads as follows, "Two stations on Rosebud Creek 16 upstream." I'll skip over the parenthetical. "And 17 downstream of Lee Coulee were used to determine if 18 hydrologic impacts to Lee Coulee could be detected 19 in Rosebud Creek. TDS is shown in Figure 9-5 as a 20 general indicator of changes in water quality." 21 Are those the two stations that you're 22 talking about? 23 A. I believe so, yes. 24 Q. And I'd ask you just to read to yourself 25 the remainder of the text in that paragraph.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. It is difficult to look at that statement 2 in isolation because the remainder, the conclusion 3 that is drawn in this section is that, "The proposed 4 action is designed to prevent material damage to 5 Rosebud Creek because as of 2013, there has been no 6 change in water quality in Rosebud Creek that can be 7 directly attributable to mining in Lee Coulee." 8 I disagree that that is the proper 9 standard directly attributable and, therefore, I am 10 unclear whether the conclusions reached in that 11 statement that you read are subject to the same 12 error. 13 Q. And in essence, if I understand your 14 testimony, your objection is based upon what you've 15 talked about as the burden of proof; is that right? 16 A. That is correct. 17 Q. But in terms of the factual issues 18 divorced from that legal issue, do you have a 19 factual basis to disagree with the sentence that 20 reads, "The concentration of TDS measured at the 21 downstream station has not increased over time and, 22 similarly, no trend can be seen in the difference in 23 concentration between the upstream and downstream 24 stations"? 25 A. If you'd look at that in conjunction with</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Okay. 2 Q. There is an indication that flow 3 measurements were taken between 1989 and 1993 and 4 these are obviously evaluated in the CHIA. You see 5 that, don't you? 6 A. Yes. 7 Q. And there was a TDS load that was 8 calculated for the two monitoring stations. You see 9 that as well, don't you? 10 A. Uh-huh. 11 Q. And it indicates that a salt load reveals 12 that Rosebud Creek gains salt between those two 13 monitoring points. Do you see that? 14 A. Yes. 15 Q. And then the ending sentence to that 16 paragraph reads as follows, "The concentration of 17 TDS measured at the downstream station has not 18 increased over time and, similarly, no trend can be 19 seen in the difference in concentration between the 20 upstream and downstream stations." Do you have a 21 basis to disagree with the conclusion in that 22 sentence? 23 A. Let me continue reading this because I 24 have marked other places. 25 Q. Okay.</p>	<p style="text-align: right;">Page 101</p> <p>1 the rest of that paragraph, which is the upstream is 2 different that the downstream, so Lee Coulee is 3 obviously adding something, then I don't disagree 4 that that's the conclusion that DEQ reached. 5 Q. So explain to me and I apologize, maybe I 6 misunderstood your testimony. Is there a factual 7 basis or a scientific basis for you to disagree with 8 that statement? 9 A. Today, no, because I am not a hydrologist 10 and once we see a legally compliant analysis that is 11 based upon your obligation to show that, to 12 affirmatively demonstrate that this isn't going to 13 be the case, I can't say one way or the other, and I 14 would eventually want to hire a hydrologist to make 15 this determination. But right now we are arguing 16 legal issues about whether the analysis that was 17 conducted was legally proper. 18 Q. And, you know, I'm really not interested 19 in wading into that legal issue and, if I were, your 20 counsel would object. But just in terms of the 21 factual issues and the scientific issues, as we sit 22 here today you don't have a factual or scientific 23 issue with that statement; is that right? 24 A. As a nonhydrologist, I do not. 25 Q. And then going on to the paragraph that</p>

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1 Do you agree with that statement?
2 **A. Generally I think I do.**
3 Q. Within the permit area the act requires
4 the operator to minimize disturbance to the
5 hydrologic balance.
6 **A. Excuse me. Is somebody on the phone?**
7 **(Discussion off the record.)**
8 **MR. SULLIVAN:** So are we on the second
9 sentence to the DEQ response, John?
10 **MR. MARTIN:** Yes. Go ahead.
11 Q. (By Mr. Martin) Within the permit area
12 the act requires the operator to minimize
13 disturbance to the hydrologic balance; is that
14 right?
15 **A. I'd have to go back and review the statute**
16 **and the rule. Assuming that that's close but I**
17 **can't guarantee it's identical.**
18 Q. And then the next sentences says, "A
19 reduction of water quality in the mining area is
20 expected and is not grounds for denial of a mine
21 permit application as long as reasonable
22 conservation practices are being applied."
23 Do you agree with that statement?
24 **A. Yes, however, water flows downhill and so**
25 **the question is will that eventually move offsite in**

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1 **a way that harms the hydrologic balance outside the**
2 **permit area.**
3 Q. And you don't have an opinion on that as
4 you sit here today?
5 **A. I don't have an opinion on what? I have**
6 **an opinion on many things.**
7 Q. On whether or not the groundwater from
8 this area would move outside the permit area and
9 provoke some sort of material damage off the permit?
10 **A. Could you give me a minute? I can't**
11 **answer that question off the top of my head. The**
12 **record -- this is in response to your question**
13 **number 19, I believe. This is what you're asking**
14 **about and there are a number of places where we do**
15 **have an opinion about that. Is the question you're**
16 **asking different than number 19 or is it similar to**
17 **number 19?**
18 **MR. MARTIN:** Read back the question.
19 (Previous question read.)
20 Q. (By Mr. Martin) And let me rephrase that.
21 As you sit here today, you don't have a view as to
22 whether or not groundwater would move from the
23 permit area to areas outside the permit area and
24 provoke some sort of material damage to the
25 groundwater; is that correct?

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1 **A. That is incorrect. I believe that there**
2 **is a number of pieces of evidence in the record that**
3 **are contrary to that conclusion. In the CHIA at**
4 **9-58 through 9-59, MEIC's response to comments or**
5 **comments, sorry, in August of 2015 in which we refer**
6 **to a study by Clark on page 4, the answers to**
7 **interrogatories on page 11, 5B, and DEQ response at**
8 **page 27. And I would be happy to find all those for**
9 **you.**
10 Q. Well, let's focus for a moment on the
11 CHIA. But before we do that, let me ask. If I
12 understood your testimony this morning, you didn't
13 have a view as to what direction the groundwater
14 would flow; is that right?
15 **A. I believe that some of the data indicates**
16 **what direction it would flow, but as I am not a**
17 **hydrologist or a geohydrologist and I don't**
18 **understand the complex nature of the hydrology and**
19 **the geology in the area, I am not the best person to**
20 **determine which direction groundwater will flow out**
21 **there in any one location.**
22 Q. And so as you sit here today, you don't
23 know whether groundwater would flow from AM4 or
24 Area B to areas outside the permit area and cause
25 material damage; is that correct?

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1 **A. I believe there is evidence in the record**
2 **to that effect but I don't believe that you have met**
3 **your burden of proving that it will not.**
4 Q. And, Ms. Hedges, I'm asking what your view
5 is. I'm asking what MEIC/Sierra Club's view is on
6 that issue. And I recognize what your legal
7 position is.
8 **MR. SULLIVAN:** And I'm going to object on
9 the basis that it's been asked and answered and
10 she has stated the organization's position on
11 the issue.
12 Q. (By Mr. Martin) And if I understood your
13 testimony earlier today, you don't know what
14 direction the groundwater would flow beneath AM4; is
15 that right?
16 **A. Me personally? No. I believe that there**
17 **is some information in the record. But me, all I**
18 **can do is point to information in the record.**
19 Q. Okay. Let's go ahead and go to that
20 record then. And first let's talk about --
21 (Deposition Exhibit 12 marked
22 for identification.)
23 Q. (By Mr. Martin) Ms. Hedges, we're handing
24 you a document that's been marked for identification
25 as Exhibit 12. And, for the record, I will explain

<p style="text-align: right;">Page 158</p> <p>1 Q. And the last sentence, "No material damage 2 is indicated because any mine-related water quality 3 changes are not likely to be distinguishable from 4 natural variations." Do you agree with that 5 sentence? 6 A. No. 7 Q. And what would make you think that water 8 quality changes are distinguishable from natural 9 variation? 10 A. I believe that this is a conclusion 11 without sufficient backup material. This is stated 12 as a conclusion but I don't believe that it is 13 supported by the evidence in the record that is in 14 the -- this section of the material damage analysis 15 for East Fork Armells Creek. 16 Q. And you've looked at Figure 9-23 that's 17 cited there? 18 A. Yeah, I have. Do you want me to look at 19 it now? 20 Q. You don't have to. I just want to make 21 sure that I understood the basis for your 22 conclusion. 23 And then, of course, there is a discussion 24 in the preceding two paragraphs as well; is that 25 right?</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. So what study would be sufficient to 2 achieve that level? Set aside for the moment 3 changes in water classification and those sorts of 4 things. What would you consider to be a sufficient 5 analysis for the conclusion that is recited in the 6 CHIA? 7 A. Well, ultimately that's not my job. 8 Q. On that we can agree. 9 A. Yes. 10 Q. Whose job is it? That's a serious 11 question. 12 A. It is the -- the regulation says that you 13 have to affirmatively demonstrate as the applicant 14 and DEQ has to verify based upon evidence in the 15 record that you are not going to cause material 16 damage to the cumulative hydrology in the impacted 17 area. That's paraphrasing, but I would say it is 18 your job initially, it is DEQ's job secondarily, and 19 you have to work within the confines of the 20 requirements in statute and you have to show that 21 evidence in the record. 22 Q. And who is it that makes the judgment as 23 to whether or not we, that is Western Energy, has 24 sufficient, has submitted sufficient evidence or 25 information?</p>
<p style="text-align: right;">Page 159</p> <p>1 A. There is. 2 Q. But that's not sufficient for your 3 purposes? 4 A. No. 5 Q. What would you have DEQ do in this setting 6 that would be sufficient by way of an analysis for 7 your purposes? 8 A. Comply with the requirement in statute and 9 regulation. 10 Q. Well, what would that be? What would they 11 do that would be sufficient to, as you put it, 12 comply with the regulations and the statute? 13 A. They would have to -- well, they would 14 have to -- you would have to affirmatively 15 demonstrate and they would have to verify that you 16 had demonstrated that you were not going to have 17 material damage off the mine site. You have to look 18 at all of the anticipated impacts in the area and 19 you have to look at the existing water quality. You 20 need to look at the fact that it is a perennial or 21 intermittent stream and not ephemeral, and you 22 should be changing water classifications through the 23 proper process if you find that you are going to be 24 changing the water chemistry in a way that harms 25 aquatic life.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Well, that is the permitting process that 2 has been developed and -- 3 Q. That's for DEQ to decide, isn't it? 4 A. It is for DEQ to decide but they are not 5 the final arbiter. If we disagree and believe that 6 they have failed to do their job, as we have on many 7 occasions, and on some occasions we have been 8 correct, found by either the Board of Environmental 9 Review or a court. 10 Q. And what I'm trying to discern is what is 11 it on this particular issue, on just this issue, the 12 TDS issue where the PHC said there may be an 13 increase of perhaps as much as 13 percent in the TDS 14 in the alluvium. What is it that either Western 15 Energy or DEQ could possibly do that would satisfy 16 you that the conclusion they've reached is accurate? 17 A. It would be an analysis and I would -- 18 once the analysis is properly conducted, I would 19 probably want to hire a hydrologist, a 20 geohydrologist to analyze the data that you have 21 provided. 22 Q. And, of course, you know that there are 23 hydrologists that work on staff at DEQ. 24 A. Uh-huh. 25 Q. And you understand and appreciate that not</p>

<p style="text-align: right;">Page 214</p> <p>1 DEQ really thought.</p> <p>2 Q. But you have -- You will agree with me,</p> <p>3 won't you, that DEQ in this document concluded that</p> <p>4 that reach of EFAC was ephemeral; is that right?</p> <p>5 A. DEQ concluded in this document that that</p> <p>6 is the case. It did not look at the historic nature</p> <p>7 necessarily of that section of stream and whether it</p> <p>8 has always been ephemeral.</p> <p>9 Q. And what you've just described is the</p> <p>10 basis for you to say that there may be areas of this</p> <p>11 portion of East Fork Armells Creek that are not</p> <p>12 ephemeral; is that right?</p> <p>13 A. There may be portions of East Fork Armells</p> <p>14 Creek that are not ephemeral based upon statements</p> <p>15 like this in the document that you handed me, the</p> <p>16 assessment, where the mine has not obliterated the</p> <p>17 channel, the stream habitat is not impaired. So it</p> <p>18 is obvious that this is just looking at the current</p> <p>19 situation and is not looking at how the mine has</p> <p>20 impacted that water body over time.</p> <p>21 Q. And is there any record, any historic</p> <p>22 record that would indicate that the mine</p> <p>23 "obliterated" East Fork Armells Creek?</p> <p>24 A. That's a statement in here. I don't know.</p> <p>25 I think that we may have to look back at these</p>	<p style="text-align: right;">Page 216</p> <p>1 the law requires you to do a cumulative hydrologic</p> <p>2 analysis and that the impacts from mining on Area B</p> <p>3 are a part of that analysis.</p> <p>4 Q. And getting back to the question. While I</p> <p>5 appreciate that one must consider other parts of</p> <p>6 Area B than just AM4 for a cumulative impacts</p> <p>7 analysis, you're not suggesting, are you, that with</p> <p>8 AM4 we're reopening the entire permit for Area B?</p> <p>9 A. We are looking at the impacts from what</p> <p>10 has occurred in Area B on the hydrologic balance of</p> <p>11 the area. You cannot -- What you are arguing for,</p> <p>12 it appears to me, is segmentation.</p> <p>13 Q. And for the record let's be clear. Our</p> <p>14 position is not segmentation. We recognize what the</p> <p>15 word cumulative means. What I'm trying to discern</p> <p>16 is whether or not you folks are attempting to take</p> <p>17 the position that by virtue of this amendment we've</p> <p>18 reopened the entirety of Area B?</p> <p>19 MR. SULLIVAN: And I'm going to object on</p> <p>20 the basis that it's been asked and answered,</p> <p>21 it's argumentative, and I'll leave it at that.</p> <p>22 Q. (By Mr. Martin) And, sincerely, I don't</p> <p>23 believe it's been answered. It's certainly been</p> <p>24 asked. And I don't think this is a difficult</p> <p>25 question and I'm not trying to trick you. I'm</p>
<p style="text-align: right;">Page 215</p> <p>1 historic records that are in the record that we have</p> <p>2 cited before regarding the nature of that water</p> <p>3 body.</p> <p>4 Q. Okay. Do you know what the proposed</p> <p>5 operation is that is the subject of this hearing</p> <p>6 before BER?</p> <p>7 A. Excuse me?</p> <p>8 Q. Isn't it true that the proposed operation</p> <p>9 that we're talking about is AM4?</p> <p>10 A. We are talking about Area B and an</p> <p>11 amendment to expand Area B.</p> <p>12 Q. And that would be AM4; would it not?</p> <p>13 A. Yes. AM4 is an amendment to the</p> <p>14 existing --</p> <p>15 Q. One of the things I'm trying to understand</p> <p>16 is whether or not you're suggesting that because</p> <p>17 this is an amendment it somehow opens up the Area B</p> <p>18 permit. Are you suggesting that?</p> <p>19 A. I am suggesting that Area B is an integral</p> <p>20 component of Amendment 4. There would be no</p> <p>21 amendment if you did not have Area B.</p> <p>22 Q. I'll grant you that. But it's not your</p> <p>23 position that we are opening up the permit for</p> <p>24 Area B as a whole, is it?</p> <p>25 A. You are looking -- It is my position that</p>	<p style="text-align: right;">Page 217</p> <p>1 trying to understand what your position is.</p> <p>2 MR. SULLIVAN: Well, the position of the</p> <p>3 organizations is as stated in our notice of</p> <p>4 appeal. We've laid out the grounds for the</p> <p>5 appeal and we've stated the basis for them, and</p> <p>6 so I think you really are asking for a legal</p> <p>7 conclusion. And to the extent that this</p> <p>8 witness is able to answer it, the witness has</p> <p>9 attempted to answer it. It may not be the</p> <p>10 answer that you wanted but it's been sincerely</p> <p>11 attempted.</p> <p>12 Q. (By Mr. Martin) And let me ask this</p> <p>13 simplistic question. Are you with this action</p> <p>14 attempting to reopen the permit for Area B as</p> <p>15 opposed to the amendment that's been described as</p> <p>16 AM4?</p> <p>17 MR. SULLIVAN: And I'm going to object on</p> <p>18 the same basis.</p> <p>19 MR. MARTIN: Fair enough.</p> <p>20 MR. SULLIVAN: Calls for a legal</p> <p>21 conclusion, asked and answered.</p> <p>22 A. The cumulative impact analysis must</p> <p>23 include Area B and the impacts that have occurred in</p> <p>24 Area B.</p> <p>25 Q. (By Mr. Martin) And that's as far as you</p>

<p>Page 218</p> <p>1 would go; is that right?</p> <p>2 A. No. It is the impacts to the hydrologic</p> <p>3 balance in the cumulative impact area.</p> <p>4 MR. MARTIN: Let's go off the record.</p> <p>5 (Discussion off the record.)</p> <p>6 Q. (By Mr. Martin) I don't have any further</p> <p>7 questions. Let me confer with Becky to make sure.</p> <p>8 (Off the record briefly.)</p> <p>9 Q. (By Mr. Martin) Let's go back on the</p> <p>10 record and just a follow-up question that we talked</p> <p>11 about. Would you agree that material damage</p> <p>12 determination for AM4 applies only to impacts to the</p> <p>13 hydrologic balance resulting from the proposed</p> <p>14 mining operation for AM4 and the impacts of previous</p> <p>15 existing and anticipated mining that interact with</p> <p>16 the impacts of the proposed mining operation for</p> <p>17 AM4?</p> <p>18 A. That was a mouthful.</p> <p>19 MR. SULLIVAN: I'm going to object to the</p> <p>20 extent it calls for a legal conclusion and it</p> <p>21 is a compound question, but answer it to the</p> <p>22 extent you can.</p> <p>23 A. To the extent that that question complies</p> <p>24 with the rules and the definition of material damage</p> <p>25 and the definition of anticipated mining, I would</p>	<p>Page 220</p> <p>1 CERTIFICATE OF WITNESS</p> <p>2 PAGE LINE CORRECTION</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 I, ANNE HEDGES, have read the foregoing</p> <p>20 transcript of my testimony and believe the same to</p> <p>21 be true except for the corrections noted above.</p> <p>22 DATED this _____ day of _____, 2016.</p> <p>23</p> <p>24 _____</p> <p>25 Deponent</p>
<p>Page 219</p> <p>1 agree with that statement.</p> <p>2 Q. (By Mr. Martin) I think we're done.</p> <p>3 (The deposition was concluded at</p> <p>4 6:00 p.m.)</p> <p>5 (Signature required.)</p> <p>6 * * * * *</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 221</p> <p>1 C E R T I F I C A T E</p> <p>2 COUNTY OF LEWIS AND CLARK)</p> <p>3 STATE OF MONTANA)</p> <p>4</p> <p>5 I, LISA R. LESOFSKI, Registered</p> <p>6 Professional Reporter and notary public for the</p> <p>7 State of Montana, do hereby certify:</p> <p>8 That the witness in the foregoing</p> <p>9 deposition was first duly sworn by me in the</p> <p>10 foregoing cause, that the deposition was then taken</p> <p>11 before me at the time and place herein named, that</p> <p>12 the deposition was reported by me and that the</p> <p>13 foregoing -219- pages contain a true record of the</p> <p>14 testimony of the witness to the best of my ability.</p> <p>15 IN WITNESS WHEREOF, I have set my hand and</p> <p>16 seal on this 20th day of May, 2016.</p> <p>17</p> <p>18 _____</p> <p>19 Lisa R. Lesofski</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>